kinds of goods is the same, to permit a company to charge different prices is to give it a right to hamper prospering industries and pamper those in distress, against that public policy which lies at the root of the law of public service. See *Tift* v. *Southern Railway Co.*, 138 Fed. 753. And as to customers receiving identical service, to admit that the successful shall pay more than the struggling is simply to say that a railroad or telephone corporation may levy a progressive income tax. By the principal case it is decided that one in the public employment may not charge what the particular customer can pay; it remains to be determined that he may not charge for a particular service what the traffic will bear. See *Western Union Telegraph Co.* v. *Call Publishing Co.*, 181 U. S. 92.

TRUSTS — RESTRAINTS ON ALIENATION OF CESTUI'S INTEREST — SPENDTHRIFT TRUST CREATED BY BENEFICIARY. — X, a spendthrift, conveyed an estate to Y, on trust to pay X during his life such sums out of the profits as Y should think proper. It was expressly provided that Y should not be compellable to pay X any part of the profits; and that on the death of X the *corpus* together with accumulations was to go to the appointees of X. *Held*, that the estate is liable for the subsequent debts of X. *Petty* v. *Moores Brook Sanitarium*, 67 S. E. 355 (Va.).

Even in jurisdictions where spendthrift trusts are upheld when created by a third party, they are invalid if founded for the grantor's own benefit. *Schenck* v. *Barnes*, 156 N. Y. 316; *Jackson* v. *Von Sedlitz*, 136 Mass. 342. It is axiomatic, however, that unless a *cestui* has an enforceable claim against his trustee there is nothing which his creditors can reach. *In re Coleman*, 39 Ch. D. 443; *Davidson's Executors* v. *Kemper*, 79 Ky. 5. Where the trustee has discretion merely as to the mode of applying the fund, the *cestui's* interest is available for his debts. *Snowdon* v. *Dales*, 6 Sim. 524; *Stewart* v. *Madden*, 153 Pa. St. 445. But in the case considered the *cestui* has no claim which equity would enforce, and it is difficult to see against what interest the creditor levied equitable execution. *Holmes* v. *Penny*, 3 K. & J. 90. See GRAY, RESTRAINTS ON ALIENATION, 2 ed., §§ 163–166. The creditor is amply protected in such a case by holding the trustee accountable for actual payments to the *cestui* after notice of the claim. *In re Neil*, 62 L. T. N. S. 649. The court, following a recent decision, regards the scheme employed as an evasion of the law and hence against public policy. *Menken* v. *Brinkley*, 94 Tenn. 721. If this is true, it is submitted that the remedy is to have the conveyance set aside rather than to levy equitable execution.

TRUSTS — RESULTING TRUSTS — EFFECT OF PARTIAL FAILURE OF CHARITABLE TRUST ON POWER OF SALE. — A devised land to his executors on trust to sell the same and divide the proceeds among named charities. As to eleven-seventeenths of the land the trust failed. The executors sold the land to B, and the heirs asked for a partition thereof. *Held*, that although the eleven-seventeenths passed to the heir as intestate property, the executors under their power of sale gave good title to the whole. *Bender* v. *Paulus*, 90 N. E. 994 (N. Y.).

It has been held that where a trust fails for vagueness, the devise fails as well and the property goes as intestate. *Scott* v. *Brownrigg*, 9 L. R. Ir. 246. But according to the prevailing view, if the purposes of a trust fail partially or wholly, the devisees hold the property on a resulting trust to the heirs. *Longley* v. *Longley*, L. R. 13 Eq. 137; *Sims* v. *Sims*, 94 Va. 580. Since, however, a resulting trust connotes something analogous to intestacy as to the beneficial interest, and since the testator devised his absolute interest to the executors, the latter should hold rather on a constructive trust. See 5 HARV. L. REV. 392, 393. In New York, statutes making invalid certain gifts to charities are regarded as limiting the testator's power to give, so that the devise fails to the same extent as the trust and the legal title goes *pro tanto* to the heirs. *Jones* v. *Kelly*, 170 N. Y. 401; *Chamberlain* v. *Chamberlain*, 43 N. Y. 424. For this construction there is some authority. *Doe* v. *Wrighte*, 2 B. & Ald. 710. *Contra*, *Russell* v. *Jackson*, 10 Hare

204. But whether or not the legal title descends to the heir, there is no reason why the power of sale given the executors should not subsist for the benefit of the interests which do not fail, while convenience usually demands that it should. *Hatt* v. *Rich*, 59 N. J. Eq. 492.

WITNESSES — PRIVILEGED COMMUNICATIONS — ATTORNEY AND CLIENT: TESTATOR'S INSTRUCTIONS CONCERNING WILL. — A testator's first will was admitted to probate. His second will, not being found, was presumed to have been destroyed by him. The attorney's office copy of this second will was offered, to show that it revoked the first will. *Held*, that the testator's communications to his attorney are privileged, and the copy inadmissible. *Matter of Cunnion*, 135 N. Y. App. Div. 864.

To allow a man to obtain legal advice without fear of prejudicing his interests, the law protects confidential communications between attorney and client. *Greenough v. Gaskell*, 1 Myl. & K. 98; *Whiting* v. *Barney*, 30 N. Y. 330. In testamentary affairs, the death of the testator removes the reason for the protection and generally terminates the privilege. *Russell* v. *Jackson*, 9 Hare 387; *Doherty* v. *O'Callaghan*, 157 Mass. 90. See WIGMORE, EVIDENCE, § 2314. But the provision of the New York Code is very strict, making the privilege absolute unless expressly waived by the client at the trial. N. Y. CODE CIV. PROC. §§ 835, 836; *Loder* v. *Whelpley*, 111 N. Y. 239. Since a testator obviously cannot make such a waiver, this rule has led to injustice and has been judicially amended. Only communications intended, when made, to be confidential are privileged. *Matter of Smith*, 61 Hun (N. Y.) 101; *Matter of McCarthy*, 55 Hun (N. Y.) 7; *Whiting* v. *Barney*, *supra*. The privilege is waived when the attorney witnesses the will. *Matter of Coleman*, 111 N. Y. 220; *Matter of Sears*, 33 N. Y. Misc. 141. If the will is lost after the testator's death, public policy determines the privilege. *Sheridan* v. *Houghton*, 16 Hun (N. Y.) 628. The testator in the main case, by destroying the will, indicated that he desired the privilege to continue. If the purpose of the rule is to respect the client's wishes, and so insure freedom in his dealings with his attorney, the case must be supported.

BOOK REVIEWS.

A TREATISE ON THE LAW OF INSURANCE IN ALL ITS BRANCHES. By George Richards. Third Edition. Enlarged and Rewritten. New York: The Banks Law Publishing Company. 1909. pp. xxvii, 959.

The earlier editions of this book were prepared primarily for students. They contained about three hundred pages of treatise and about the same number of pages of reported cases, with an appendix of statutes and forms. The present edition contains a treatise of almost seven hundred pages, omits the cases, and devotes to statutes and forms an appendix of more than a hundred pages. The volume now appeals primarily to practitioners. Despite the absence of a table of cases, it is well adapted to be useful to its new audience, provided the reader has already had careful instruction in the subject discussed.

The author's own view is that of a practitioner. This is indicated here and there by comments which would be quite impossible for any lawyer to make who has not had much to do with insurance litigation. It is indicated also by careful descriptions of the mode in which the insurance business is carried on. The only shortcomings discovered in these descriptions are that the author does not explain the functions and powers of the various persons who are by the public indiscriminately termed insurance agents, and that he quite unintentionally gives the im-